APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/702,004	10/30/2000	Vladimir Victorovich Schipunov	291508006US1	7812

			EXAMINER
25096	7590	03/09/2006	LASTRA, DANIEL

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ART UNIT	PAPER NUMBER
3622	

DATE MAILED: 03/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/702,004	SCHIPUNOV ET AL.
	Examiner	Art Unit	
	DANIEL LASTRA	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>*21 december 2005*</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-41 and 44-47* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-41 and 44-47* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

1.   Claims 1-41 and 44-47 have been examined. Application 09/702,004 (Targeting electronic advertising placement in accordance with analysis of user inclination and affinity) has a filing date 10/30/2000 and Claims Priority from Provisional Application 60/167,060 (11/22/1999).

Response to Amendment

2.   In response to Non Final Rejection filed 09/21/2005, the Applicant filed an Amendment on 12/21/2005, which cancel claims 42, 43 and 48-51. Applicant's amendment did not overcome the Section 101 of claims 22-24 and 34 but overcame the previous Section 112 rejection of claims 42, 43 and 48-51.

Claim Rejections - 35 USC § 112

3.   The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 18, 20 and 21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 18, 20 and 21 recites "wherein the analysis analyzes filename, textual content and visual content in the traffic". Nowhere, in Applicant's specification, said limitations are recited or explained.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 31 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 31 recites "wherein the success metrics are generated based upon a conversion rate for advertising messages placed on the advertising outlet". Nowhere, in Applicant's specification is defined the term "conversion rate for advertising messages placed on the advertising outlet". For purpose of art rejection, said limitation would be interpreted as return of investment for advertisement messages placed on the advertising outlet".

Claim Rejections - 35 USC § 101

4.   Claims 22-24 and 34 are rejected under 35 U.S.C. 101 as non-functional descriptive material. The data structure described in claims 22-24 and 34 is simply a data file – no functional change occurs when an application program uses the structural data. Also, the claims don't meet the definition of a true "data structure" (see the IEEE definition in MPEP 2106). The "data structure are usable to select" is the intended use of said data but said data is not performing the step of said selecting.

Claim Rejections - 35 USC § 103

5.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-41 and 44-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shapira (US 6,925,442) in view of Wexler (US 5,960,409).

As per claim 1, Shapira teaches:

A method in a computing system for assessing, for a selected electronic advertiser having a web site and each of a plurality of electronic publishers each also having a website, a measure of the desirability of placing with the electronic publisher one or more advertising messages for the selected electronic advertiser, comprising:

for each of a plurality of users, storing a user identifier on a computer system used by the user (see column 4, lines 55-60 "cookie");

when one of the plurality of users visits the electronic advertiser website, receiving and storing an indication of a first type indicating that the user visited the electronic advertiser website, the indication containing the user identifier stored on the computer system used by the user (see column 9, tables A and B);

when one of the plurality of users visits the website of one of the plurality of electronic publishers, receiving and storing an indication of a second type indicating that the user visited the electronic publisher website, the indication containing the user identifier stored on the computer system used by the user and an identifier of the electronic publisher (see column 7, lines 1-30);

selecting the user identifiers contained in stored indications of the first type (see column 7, lines 1-30);

determining the number of unique selected user identifiers (see column 7, lines 42-65);

for each of the electronic publishers, determining the number of selected user identifiers that are contained in at least one indication of the second type that also contains an identifier of the electronic publisher to obtain a count for the electronic publisher (see column 13, table 3);

dividing the count for the electronic publisher by the number of unique selected user identifiers to obtain an inclination metric for the electronic publisher (see column 13, table 3); analyzing the inclination metrics obtained for the electronic publishers (see column 13, tables 2-3) but does not expressly and selecting one or more of the electronic publishers on which to place an advertising message for the advertiser based upon the analysis. However, Wexler teaches that advertisers like to advertise at more than one location (i.e. banner publisher site) and therefore, said advertisers would like to know the effectiveness of each of the publishing sites (i.e. which sites generates the most visit or revenue to said advertisers; see Wexler column 5, lines 24-45). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Wexler's advertisers would use Shapira's return on investment analysis and visitors' qualification level (see Shapira table 8) to select one or more electronic publishers that would provide said advertisers the biggest return on investment. Advertisers would be motivated to select the publisher sites that would provide the biggest return on investment in order that said advertisers maximize their advertisements' revenues.

As per claims 2, 22, 34 and 36, Shapira teaches:

A method in a computing system for assessing, for a selected advertiser and each of a plurality of candidate advertising outlets, a measure of the desirability of placing with the candidate advertising outlet one or more advertising messages for the selected advertiser, comprising, for each of the plurality of candidate advertising outlets:

identifying a plurality of users that have visited the candidate advertising outlet (see column 4, lines 17-60);

counting the number of identified users that have also visited the selected advertiser (see column 9, table a and b); and generating for the candidate advertising outlet a metric that compares the number of identified users to the number of counted users (see tables 1-8 "value of visitor referred" and "top referring sites") but does not expressly teach and constitutes a measure of the desirability of placing with the candidate advertising outlet one or more advertising messages for the selected advertiser. However, the same argument made in claim 1 regarding this missing limitation is also made in claim 2.

As per claim 3, <u>Shapira</u> teaches:

The method of claim 2, wherein the candidate advertising outlets are web publishers (see column 19, table 7 "yahoo, excite").

As per claim 4, <u>Shapira</u> teaches:

The method of claim 2 wherein the candidate advertising outlets are Internet publishers (see column 19, table 7).

As per claim 5, <u>Shapira</u> teaches:

The method of claim 2 wherein the candidate advertising outlets are electronic publishers (see column 19, table 7).

As per claim 6, <u>Shapira</u> teaches:

The method of claim 2 wherein the metric is generated by dividing the number of counted users by the number of identified users (see column 13, table 3)

As per claims 7, 23 and 37, <u>Shapira</u> teaches:

The method of claim 2 but does not expressly teach wherein the counting counts the number of identified users that (a) have also visited the selected advertiser and (b) have not viewed an advertising message for the selected advertiser, and wherein the metric is generated by dividing the number of counted users by the number of identified users. <u>Shapira</u> maintains a log file which contains all information regarding all transmission performed by the system and said log file would indicate that advertisements that were actually displayed to a user (see column 5, lines 50-60). <u>Shapira</u> also tracks visitors to an advertiser's website that have not being referred by another referral site and therefore, have not viewed an advertising message in said referral site (see <u>Shapira</u> column 9, lines 54-60). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that <u>Shapira</u> would count the numbers of unique users that visited a publisher site and an advertiser site and have not displayed an advertisement of a selected advertiser and would divide the obtained numbers by each other to determine an inclination metric or effectiveness for said publisher. <u>Shapira</u> log file would keep track of a user's browsing

activities and said tracking would be used to determine the effectiveness of each of the publishing sites.

As per claims 8 and 24, Shapira teaches:

The method of claim 2 but does not expressly teach wherein the counting counts the number of identified users that have also visited the selected advertiser without first viewing an advertising message for the selected advertiser, and wherein the metric is generated by dividing the number of counted users by the number of identified users. Shapira maintains a log file which contains all information regarding all transmission performed by the system and said log would indicate that advertisements that were actually displayed to a user (see column 5, lines 50-61). Shapira also tracks visitors to an advertiser's website that have not being referred by another referral site and therefore, have not viewed an advertising message in said referral site (see Shapira column 9, lines 54-60). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Shapira would count the numbers of unique users that visited a publisher site and an advertiser site without first viewing an advertisement of a selected advertiser and would divide the obtained numbers by each other to determine an inclination metric or effectiveness for said publisher. Shapira's log file would keep track of a user's browsing activities and said tracking would be used to determine the effectiveness of each of the publishing sites.

As per claim 9, Shapira teaches:

The method of claim 2 but does not expressly teach wherein a related advertiser is related to the selected advertiser, and wherein the counting counts the number of

identified users that (a) have also visited the selected advertiser, (b) have not viewed an advertising message for the selected advertiser, and (c) have not viewed an advertising message for the related advertiser, and wherein the metric is generated by dividing the number of counted users by the number of identified users. <u>Shapira</u> maintains a log file which contains all information regarding all transmission performed by the system and said log would indicate that advertisements that were actually displayed to a user (see column 5, lines 50-60). <u>Shapira</u> also tracks visitors to an advertiser's website that have not being referred by another referral site and therefore, have not viewed an advertising message in said referral site (see <u>Shapira</u> column 9, lines 54-60). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that <u>Shapira</u> would count the numbers of unique users that visited a publisher site and an advertiser site and have not viewed an advertisement of a selected advertiser or a related advertiser and would divide the obtained numbers by each other to determine an inclination metric or effectiveness for said publisher. <u>Shapira</u>'s log file would keep track of a user's browsing activities and said tracking would be used to determine the effectiveness of each of the publishing sites.

As per claim 10, <u>Shapira</u> teaches:

The method of claim 2 but does not expressly teach wherein a related advertiser is related to the selected advertiser, and wherein the counting counts the number of identified users that have also visited the selected advertiser without first (a) viewing an advertising message for the selected advertiser or (b) viewing an advertising message for the related advertiser, and wherein the metric is generated by dividing the number of

counted users by the number of identified users. Shapira maintains a log file which

contains all information regarding all transmission performed by the system and said log

would indicate that advertisements that were actually displayed to a user (see column 5,

lines 50-62). Shapira also tracks visitors to an advertiser's website that have not being

referred by another referral site and therefore, have not viewed an advertising message

in said referral site (see Shapira column 9, lines 54-60). Therefore, it would have been

obvious to a person of ordinary skill in the art at the time the application was made, to

know that Shapira would count the numbers of unique users that visited a publisher site

and an advertiser site without first viewing an advertisement of a selected advertiser or

a related advertiser and would divide the obtained numbers by each other to determine

an inclination metric or effectiveness for said publisher. Shapira's log file would keep

track of a user's browsing activities and said tracking would be used to determine the

effectiveness of each of the publishing sites.

As per claim 11, Shapira teaches:

The method of claim 2 wherein the counting counts the number of identified

users that (a) have also visited the selected advertiser and (b) have viewed an

advertising message for the selected advertiser, and wherein the metric is generated by

dividing the number of counted users by the number of identified users (see column 13,

table 3).

As per claim 12, Shapira teaches:

The method of claim 2 but does not expressly teach wherein the counting

increments the count for each identified user that (a) visited the selected advertiser and

(b) has viewed an advertising message for the selected advertiser and decrements the count for each identified user that (c) visited the selected advertiser and (d) has not viewed an advertising message for the selected advertiser, and wherein the metric is generated by dividing the count by the number of identified users. Shapira maintains a log file which contains all information regarding all transmission performed by the system and said log would indicate that advertisements that were actually displayed to a user (see column 5, lines 50-61). Shapira also tracks visitors to an advertiser's website that have not being referred by another referral site and therefore, have not viewed an advertising message in said referral site (see Shapira column 9, lines 54-60). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Shapira would count the numbers of unique users that visited a publisher site and an advertiser site and have viewed an advertisement of a selected advertiser or decrement a count for said users that have not viewed an advertisement for the selected advertiser and would divide the obtained numbers by each other to determine an inclination metric or effectiveness for said publisher. Shapira's log file would keep track of a user's browsing activities and said tracking would be used to determine the effectiveness of each of the publishing sites.

As per claim 13, Shapira teaches:

The method of claim 2, further comprising displaying the generated metric for each candidate advertising outlet (see column 13, table 3).

As per claim 14, Shapira teaches:

The method of claim 2, further comprising:

analyzing the generated metrics; and selecting a candidate advertising outlet on which to place one or more advertising messages for the selected advertiser based upon results of the analysis (see column 19, table 8).

As per claim 15, Shapira teaches:

The method of claim 2, further comprising discerning users that have visited the candidate advertising outlets and those that have visited the selected advertiser by analyzing the contents of logs of one or more web servers that collectively receive a request when a user visits one of the candidate advertising outlets and when a user visits the selected advertiser (see column 13, table 3).

As per claim 16, Shapira teaches:

The method of claim 2, further comprising discerning whether a user has visited the candidate advertising outlets and whether the user has visited the selected advertiser by analyzing information traffic flowing to or from the user (see column 7, lines 1-60).

As per claim 17, Shapira teaches:

The method of claim 16 wherein the analysis analyzes universal resource locators contained in the traffic (see column 5, lines 4-19).

As per claim 18, Shapira teaches:

The method of claim 16 wherein the analysis analyzes filenames contained in the traffic (see column 5, lines 4-19).

As per claim 19, Shapira teaches:

The method of claim 16 wherein the analysis analyzes content contained in the traffic (see column 5, lines 4-50).

As per claim 20, Shapira teaches:

The method of claim 16 wherein the analysis analyzes textual content contained in the traffic (see column 5, lines 4-50).

As per claim 21, Shapira teaches:

The method of claim 16 wherein the analysis analyzes visual content contained in the traffic (see column 5, lines 45-60).

As per claim 25, Shapira teaches:

A method in a computing system for assessing, for a selected electronic advertiser and each of a plurality of candidate electronic publishers each having a website, a measure of the desirability of placing with the candidate electronic publisher one or more advertising messages for the selected candidate electronic advertiser, comprising:

selecting a distinguished electronic publisher that produced favorable results when an advertising message for the selected electronic advertiser was earlier placed on the distinguished electronic publisher, the distinguished electronic publisher having a website (see column 13, tables 3-8);

for each of a plurality of users, storing a user identifier on a computer system used by the user, the number of stored user identifiers constituting a first quantity (see column 7, lines 5-65);

when one of the plurality of users visits the distinguished electronic publisher advertiser website, receiving and storing an indication of a first type indicating that the user visited the distinguished electronic publisher website, the indication containing the user identifier stored on the computer system used by the user (see column 13, tables 3-8),

when one of the plurality of users visits the website of one of the plurality of candidate electronic publishers, receiving and storing an indication of a second type indicating that the user visited the candidate electronic publisher website, the indication containing the user identifier stored on the computer system used by the user and an identifier of the candidate electronic publisher (see column 13, tables 3-8). Shapira qualification level is tied to web pages or URLs a visitor must visit (see column 6, lines 46-55).

selecting the user identifiers contained in stored indications of the first type determining the number of unique selected user identifiers, constituting a second quantity (see column 11, tables 2-8);

for each of the candidate electronic publishers, selecting stored indications of the second type that contain an identifier of the candidate electronic publisher (see column 11, tables 2-6),

determining the number of unique user identifiers that are contained in at least one of the selected indications of the second type, constituting a third quantity (see column 11, tables 2-6); determining the number of unique user identifiers that are

contained in at least one of the selected indications of the second type that are also selected, constituting a fourth quantity (see column 11, tables 2-6);

dividing the product of the first and third quantities by the product of the second and fourth quantities but does not expressly teach to obtain an affinity metric for the candidate electronic and analyzing the affinity metrics obtained for the candidate electronic publishers and selecting one or more of the candidate electronic publishers on which to place an advertising message for the advertiser based upon the analysis. Shapira maintains a log file, which contains all information regarding all transmission performed by the system and said log file would indicate the advertisements that were actually displayed to a user (see column 5, lines 50-60). Also, Shapira's visitors' qualification level is tied to web pages (or URLs) a visitor must visit. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Shapira would count the numbers of unique users that visited a candidate publisher site and a high return on investment publisher (see column 11, table 2) and would divide the obtained numbers by each other to obtain a number (i.e. affinity metric) that would help advertisers decide the placement of advertisements. For example, looking at Shapira table 2 in column 11 the candidate advertiser publishers would be "yahoo banner", "builder.com", "excite banner", etc, and "Fully Qualified" visitors would be the visitors that visit a "High return on Investment Publisher" that also visit one of said candidate advertiser publishers (see Shapira column 6, lines 46-55 for the definition of "qualification level"). Therefore, Shapira's table 2 would rank said publishers' sites to the extent to which a particular pair of websites is visited by the

same user, therefore, said table 2 is determining an "affinity metric" of a candidate publisher site to an affinity publisher site. Wexler teaches that advertisers like to advertise at more than one location (i.e. banner publisher site) and therefore, said advertisers would like to know the effectiveness of each of the publishing sites (i.e. which sites generates the most visit or revenue to said advertisers; see Wexler column 5, lines 24-45). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Wexler's advertisers would use Shapira's return on investment analysis (see Shapira table 8) to select one or more electronic publishers that would provide said advertisers the biggest return on investment. Advertisers would be motivated to select the publisher sites that return the biggest return on investment to said advertisers in order that said advertisers do not waste their time and money in placing advertisements in publishers' sites that would not bring any business to said advertisers.

As per claims 26 and 27, Shapira teaches:

The method of claim 25 but fails to teach wherein candidate electronic publishers for which an affinity greater than one is obtained are selected. However, the same argument made in claim 25 is also made in claims 26 and 27.

As per claim 28, Shapira teaches:

A method in computing system for assessing, for a selected advertiser and each of a plurality of candidate advertising outlets, a measure of the desirability of placing with the candidate advertising outlet an advertising messages for the selected advertiser comprising, for each of the plurality of candidate advertising outlets:

identifying a distinguished advertising outlet as likely to produce a good result when an advertising message for the selected advertiser is place on the distinguished advertising outlet (see column 11, table 2 "top referring sites by qualification profile and qualification level"; "excite.com, builder.com, lycos.com");

for each of the candidate advertising outlets, measuring the tendency of visitors to the distinguished advertising outlet to visit the candidate advertising outlet but does not expressly teach to obtain an affinity metric for the candidate advertising outlets and based upon an analysis of the affinity metric obtained for the candidate advertising outlets, selecting one or more candidate advertising outlets on which to place an advertising message for the selected advertiser. However, the same argument made in claim 25 regarding this missing limitation is also made in claim 28.

As per claim 29, <u>Shapira</u> teaches:

The method of claim 28, further comprising:

for each of a plurality of advertising outlets on which advertising messages for the advertiser have already been placed, generating a success metric characterizing the level of success attributable to placing an advertising message for the advertiser on the advertising outlet (see column 19, table 8); and

Shapira does not expressly teach using the generated success metrics to select one of the advertising outlets on which advertising messages for the advertiser have already been placed as the distinguished advertising outlet (see column 19, tables 6-8). However, the same rejection made in claim 25 regarding this missing limitation is also made in claim 29.

As per claim 30, <u>Shapira</u> teaches:

The method of claim 29 wherein the success metrics are generated based upon a click-through rate for advertising messages placed on the advertising outlet (see column 1, lines 41-60).

As per claim 31, <u>Shapira</u> teaches:

The method of claim 29 wherein the success metrics are generated based upon a conversion rate for advertising messages placed on the advertising outlet (see column 19, table 8).

As per claim 33, <u>Shapira</u> teaches:

The method of claim 29 wherein the success metrics are generated based upon a factor specified by the selected advertiser for advertising messages placed on the advertising outlet (see column 6, lines 46-55).

As per claim 32, <u>Shapira</u> teaches:

The method of claim 29 wherein the success metrics are generated based upon an average purchase amount for advertising messages placed on the advertising outlet (see column 13, tables 3-8).

As per claim 35, <u>Shapira</u> teaches:

A method in a computing system for selecting advertising outlets on which to place advertising messages for an advertiser, comprising:

for each of a first plurality of advertising outlets, assessing the rate at which visitors to the advertiser also visit the advertising outlet (see column 11, table 2);

selecting an advertising outlet among the first plurality having the highest rate (see column 13, table 3; table 8). It is inherent that Shapira's advertiser would select the publisher with the highest ranking in return on investment.

for each of a second plurality of advertising outlets, assessing the tendency of a high performing advertising outlet to drive its visitors to the advertising outlet among the second plurality of advertising outlets (see column 13, table 3);

Shapira does not expressly teach selecting an advertising outlet among the second plurality of advertising outlets to which the high-performing advertising outlet has the greatest tendency to drive its visitors. However, the same argument made in claim 1 regarding this missing limitation is also made in claim 35.

As per claims 38-41, Shapira teaches:

The method of claim 2, wherein the candidate advertising outlet has a website, and wherein identifying a plurality of users that have visited the candidate outlet comprises identifying a plurality of users that have visited the website of the candidate advertising outlet (see column 13, table 13).

As per claim 44, Shapira teaches:

The method of claim 28 but fails to teach wherein the candidate advertising outlet has a web site, and wherein measuring the tendency of visitors to the distinguished advertising outlet to visit the candidate advertising outlet comprises measuring the tendency of visitors to the distinguished advertising outlet to visit the website of the candidate advertising outlet. However, the rejection made in claim 25 regarding this missing limitation is also made in claim 44.

As per claim 45, <u>Shapira</u> teaches:

The method of claim 28 but does not expressly teach wherein the distinguished advertising outlet has a web site, and wherein measuring the tendency of visitors to the distinguished advertising outlet to visit the candidate advertising outlet comprises measuring the tendency of visitors to the website of the distinguished advertising outlet to visit the candidate advertising outlet. However, the same argument made in claim 25 regarding this missing limitation is also made in claim 45.

As per claim 46, <u>Shapira</u> teaches:

The method of claim 28 but fails to teach wherein the candidate advertising outlet has a web site comprised of pages, and wherein measuring the tendency of visitors to the distinguished advertising outlet to visit the candidate advertising outlet comprises measuring the tendency of visitors to the distinguished advertising outlet to visit a selected page of the website of the candidate advertising outlet. However, the same rejection made in claim 25 regarding this missing limitation is also made in claim 46.

As per claim 47, <u>Shapira</u> teaches:

The method of claim 28 but fails to teach wherein the distinguished advertising outlet has a web site comprised of pages, and wherein measuring the tendency of visitors to the distinguished advertising outlet to visit the candidate advertising outlet comprises measuring the tendency of visitors to the website of the distinguished advertising outlet to visit a selected page of the candidate advertising outlet. However, the rejection applied to claim 25 regarding this missing limitation is also made in claim 47.

Response to Arguments

6.   Applicant's arguments filed 12/21/2005 have been fully considered but they are

not persuasive. The Applicant argues that claims 22-24 and 34 are directed to data

structure and therefore, statutory. The Examiner answers that Claims 22-24 and 34 are

rejected under 35 U.S.C. 101 as non-functional descriptive material. The data structure

described in claims 22-24 and 34 is simply a data file – no functional change occurs

when an application program uses the structural data. Also, the claims don't meet the

definition of a true "data structure" (see the IEEE definition in MPEP 2106). The "data

structure are usable to select" is the intended use of said data but said data is not

performing the step of said selecting.

The Examiner wants to mention that is using the <u>Shapira</u> reference instead of

<u>Gupta</u> because <u>Shapira</u> clearly teaches the ranking of publishers sites.

The Applicant argues that claims 1-24, 36-41 and 44-47 recites inclination data

and said inclination data is distinct from click-through data. The Applicant argues that

click-through data is an indication of a referral from one web site (e.g. banner

publisher's website) to another (e.g. banner advertiser's website) in that a user at a first

website clicks-through to a second website. The Applicant argues that the recited

inclination data is not obtained by counting click-through data but, rather, by determining

the extent to which users that visit the advertiser's website also visit a candidate

publisher's web site irrespective of whether one of these two web sites is visited as the

result of following a link to it on a page of the other web site. The Examiner answers that

Applicant's specification pages 2 and 3 recite "In cases where an Internet advertiser,

through the Internet advertising service, has purchased advertising space on the Web page provided to the Internet user computer system by the Internet publisher computer system, the Web page contains a reference to a URL in the domain of the Internet advertising service computer system 140. When a user computer system receives a Web page that contains such a reference, the Internet user computer systems sends a request to the Internet advertising service computer system to return data comprising an advertising message, such as a **banner advertising message**. When the Internet advertising service computer system receives such a request, it selects an advertising message to transmit to the Internet user computer system in response to the request, and either itself transmits the selected advertising message or redirects the request containing an identification of the selected advertising message to an Internet content distributor computer system, such as Internet content distributor computer systems 151 and 152. When the Internet user computer system receives the selected advertising message, the Internet user computer system displays it within the Web page. The displayed advertising message preferably includes one or more links to Web pages of the Internet advertiser's Web site. When the Internet user selects one of these links in the advertising message, the Internet user computer system **references** the link to retrieve Web page from the appropriate Internet advertiser computer system, such as Internet advertiser computer system 161 or 162. The link to the web page of the Internet advertiser's web page is preferably processed through the Internet advertising service computer system 140 to permit the Internet advertising service computer system 140 to **monitor the transversal of such links**...The Internet advertising service computer

system preferably stores a log entry each time it processes a request to return an advertising message, a request to traverse a link to a web page of the Internet advertiser's web page, or notification that the user has visited a particular page of the Internet's advertiser's web site. Each log entry preferably contains a user identifier identifying the user performing the noted action. In some embodiments, the user identifiers contained by log entries are collected by storing the user identifiers in a persistent **"cookie"** stored on the computer system of each user for the domain of the advertising service. **In some embodiments, the facility performs its inclination and affinity analyses based on the contents of this stored log**. Therefore, Applicant's specification clearly teaches that his claimed invention performs its inclination and affinity analysis from click-through data obtained from monitoring the transversal of referral links (i.e. banner advertisements). Therefore, contrary to Applicant's arguments, said referral link is the method taught by Applicant's specification to determine the extent to which users that visit the advertiser's website also visit a candidate publisher's web site.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720. The examiner can normally be reached on 9:30-6:00.
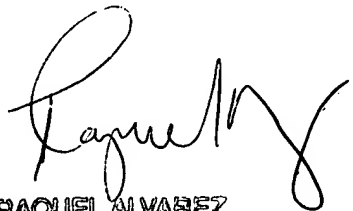
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ERIC W. STAMBER can be reached on 571-272-6724. The Examiner's Right fax number is 571-273-6720.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Daniel Lastra
February 26, 2006

RAQUEL ALVAREZ
PRIMARY EXAMINER